

PURCHASING AND LICENSING COMMITTEE

12-0604R

RESOLUTION IN THE MATTER OF THE OFF SALE LIQUOR LICENSE
OF LAST CHANCE OF DULUTH, INC. (LAST CHANCE LIQUOR), 619
EAST FOURTH STREET.

CITY PROPOSAL:

BE IT RESOLVED, that the city council of the city of Duluth makes the following findings of fact:

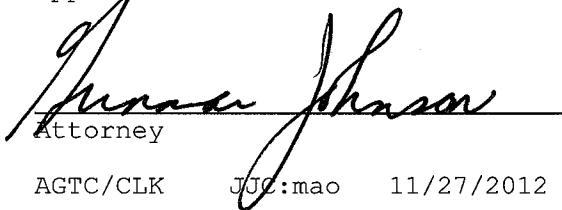
(a) On November 7, 2012, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Last Chance of Duluth, Inc. (Last Chance Liquor), 619 East Fourth Street, and has submitted its report to the city council of the city of Duluth as Public Document No. _____;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on December 17, 2012, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. _____ regarding any suspension, revocation and/or civil penalty relating to the off sale liquor license of Last Chance of Duluth, Inc. (Last Chance Liquor), 619 East Fourth Street, are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the Duluth City Council fine the licensee \$100 for the offense payable within 30 days of final city action.

Approved as to form:


Attorney

AGTC/CLK JJC:mao 11/27/2012

Alcohol, gambling and tobacco commission discussion of 11/7/12: The Alcohol, Gambling and Tobacco commission (AGTC) held a hearing on November 7, 2012, regarding the off sale liquor license of Last Chance Liquor. The police department conducted alcohol compliance checks on April 12, 2012, and the clerk was issued a ticket for selling alcohol to an underage individual. According to City Code, the licensee is responsible for the actions of the employees, and the licensee was issued a ticket for an illegal sale. The commission reduced the presumptive penalty of \$500 that is set forth in Section 8-9 of the City Code to \$100 based on the mitigating circumstances stated in the Report to the Council.

CITY OF DULUTH
ALCOHOL, GAMBLING AND TOBACCO COMMISSION

REPORT TO THE CITY COUNCIL

IN THE MATTER OF: **LAST CHANCE OF DULUTH, INC., d/b/a Last Chance Liquor**,
619 East 4th Street, Duluth, Minnesota 55805.

The above-entitled matter came on for hearing before the Duluth Alcohol, Gambling and Tobacco Commission on November 7, 2012, in the City Council Chambers in Duluth, Minnesota. The hearing record closed on November 7, 2012 upon completion of the hearing.

Terri L. Lehr, Assistant City Attorney, City of Duluth, Office of the City Attorney, 410 City Hall, Duluth, Minnesota, 55802, appeared on behalf of the City licensing staff. Licensee appeared by David Katoski, its authorized agent.

This Report is a recommendation, not a final decision. The Duluth City Council will make the final decision after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusion and Recommendations contained herein. Pursuant to Minn.Stat. §14.61, the final decision of the Council shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by the Report to file exceptions and present argument to the City Council. Parties should contact the City Clerk to ascertain the procedure for filing exceptions or presenting argument.

FINDINGS OF FACT

The commission makes the following findings of fact.

1. Licensee is licensed by the City of Duluth to sell intoxicating liquor “off-sale” at its premises located at 619 E. 4th Street, Duluth, Minnesota.
2. On April 12, 2012, Peter Greenwood, an employee of Licensee was issued a citation for sale of intoxicating liquor to a person under the age of 21 in violation of Duluth City Code section 8-28. The employee was convicted of the violation on May 2, 2012.

3. The Licensee was also issued a citation under Duluth City Code section 8-35 for the illegal sale and convicted of this offense on July 23, 2012.
4. The Commission then issued its Notice of and Order for Hearing and set a hearing date of November 7, 2012.
5. This is the Licensee's first violation for purposes of the presumptive penalty schedule provided for in Duluth City Code section 8-9. The Licensee was twice previously disciplined as follows: On December 15, 2008 under Resolution 08-0735 (imposing a civil penalty of \$250.00) for a similar violation that occurred on June 19, 2008 and again on May 11, 2009 under Resolution 09-0273 (imposing a \$750.00 civil penalty, but staying \$250.00 for one year on the condition of no same or similar) for a similar violation that occurred on November 13, 2008. However, both of these previous violations are outside of the look-back period for purposes of the presumptive penalty for the current violation. Mitigating circumstances include the following: The employee who made the unlawful sale is no longer employed with this Licensee. The Licensee participates in a Reward Program. The Licensee staff members participate in an annual training. Since the beginning of this school year, the Licensee has been diligently watching for and confiscating fake I.D.'s from prospective customers and, according to the Licensee, has surrendered these I.D.'s to the Duluth police department. The Licensee's premises are in a busy location. The decoy misrepresented his age to the Licensee's employee who made the unlawful sale.

CONCLUSIONS

Based upon these facts, the commission makes the following conclusions:

1. Section 8-9(b)(1) of the Duluth City Code provides that the violation of any law relating to the operation of a liquor establishment shall be deemed to be good cause for disciplinary action up to and including imposition of a civil penalty, license suspension or license revocation.
2. Section 8-35 of the Duluth City Code provides that the licensee shall be responsible for the conduct of its place of business and any violation of Chapter 8 of the Duluth City Code committed on the licensed premises by an employee of

the licensee shall be deemed the act of the licensee as well as the employee.

3. The Licensee is liable for the violation occurring on its licensed premises on April 12, 2012.
4. Section 8-9(c) of the Duluth City Code provides that the presumptive penalty for the current violation is a \$500 civil penalty. Mitigating circumstances exist as follows: The employee who made the unlawful sale is no longer employed with this Licensee. The Licensee participates in a Reward Program. The Licensee staff members participate in an annual training. Since the beginning of this school year, the Licensee has been diligently watching for and confiscating fake I.D.'s from prospective customers and, according to the Licensee, has surrendered these I.D.'s to the Duluth police department. The Licensee's premises are in a busy location. The decoy misrepresented his age to the Licensee's employee who made the unlawful sale.

RECOMMENDATION

It is the recommendation of the Duluth Alcohol, Gambling and Tobacco Commission that the Duluth City Council impose a civil penalty as follows:

1. Payment of a \$100 penalty; and
2. Pursuant to Duluth City Code Section 8-9(c), the civil penalty is due and payable within 30 days of council action.

Dated: _____

**DULUTH ALCOHOL, GAMBLING
AND TOBACCO COMMISSION**

By: _____
Jon Donahue, President